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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,173	11/24/2003	Robert A. Moss	MOSR01NP	7011
23892	7590	01/14/2005	EXAMINER	
DAVID S ALAVI 3762 WEST 11TH AVENUE #408 EUGENE, OR 97402			HOLZEN, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,173

Applicant(s)

MOSS, ROBERT A.

Examiner

Stephen A. Holzen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/24/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 10, 11, 13-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuchlik (5,363,834).

Re – Claims 1, 10, 11, 13 and 27: Stuchlik discloses a compressed gas chamber (136), a barrel (126), a firing valve (220), a second cylinder (226) connected to the compressed gas chamber (216) a secondary piston (236) a gas liquefied gas chamber (Col. 6, lines 30), a valve for transferring liquefied gas (240), a cocking mechanism (242), a firing mechanism (346), a primary cylinder (318) and a primary piston (316) and the cocking mech. moves the primary piston within the primary cylinder (340), where the lever is connected to the airgun and a linkage connects the lever to the piston (322), liquefied gas reservoirs (58) and a valve (250), safety (328)

a. Re – Claims 2, 3, 4, 7 and 25: These claims do not serve to further limit the parent claim because they are functional in nature. Their limitations are not afforded patentable weight.

b. Re – Claims 14-18: These claims are functional in nature and have been afforded no patentable weight. However it should be noted that Stuchlik is “capable” of performing these functions.

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- c. Re – Claim 19: wherein the cocking mechanism includes a lever pivotably connected to the airgun and a mechanical linkage connected to the lever for closing the firing valve (see Figure 5)
 - d. Re – Claim 20: wherein the cocking mechanism includes a lever pivotably connected to the airgun, and a mechanical linkage connected to the lever for actuating the transfer valve (see Figure 5).
 - e. Re – Claim 21, 22 and 23: Wherein the first gas is ambient air and the second gas is carbon dioxide, and wherein the transfer valve comprise a shuttle valve (see Figure 5)
 - f. Re – Claim 24: further comprising a passage for enabling gas to vent from the back volume during filling of the compressed gas chamber with the first gas and prior to traversing the volume of liquefied second gas into the liquefied gas chamber. (see figure 5).
3. Claims 5, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuchlik (5,363,834). Stuchlik discloses cocking the airgun and firing the airgun (see Abstract), where the first gas compressed air (see abstract), wherein the second gas is carbon dioxide It should be noted that all limitations after the word "thereby" have not been afforded patentable weight because they are not method steps and only serve to disclose how the gun is used.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuchlik (5,363,834). Stuchlik discloses every aspect of the applicant's invention except wherein the first gas is compressed between about 400 psig and about 600 psig in the compressed gas chamber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to compress the first gas to between about 400psig and about 600psig in the compressed gas chamber since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Allen, 105 USPQ 233. (see also Sullivan 5,339,791 who teaches that chambers should be compressed between 300 and 2000 psig).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 3, 4, 7 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

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which applicant regards as the invention. The manner in which the claims were written do not limit the parent claim. The claims are narrative and functional in nature rendering the claim indefinite because the scope of the claim cannot be determined.

8. Claims 2, 3, 4, 7 and 25 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The limitation "upon" is indefinite. When does this action occur? The word upon does not limit the functional language that follows in a "time sequence" and is does not specifically set out any method steps involved in the use of the invention.

9. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the word "remains" is unclear. Is the applicant attempting to claim a method step here? When should these values "remain"? The language is unclear because it does not allow a reader to determine the scope of the claim.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 703-308-2484. The examiner can normally be reached on M-F 7:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sah



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